

STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> JUDICIAL CIRCUIT FOR INGHAM COUNTY

DEANNA HUGHES, HEATHER SCHIELE,  
and BAN MICHIGAN FRACKING,

Plaintiffs,

OPINION AND ORDER

v

12-497-CE

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Defendant.

MIKE BRYANTON  
CLERK OF THE 30<sup>TH</sup>  
JUDICIAL CIRCUIT COURT  
INGHAM COUNTY, MICHIGAN

2012 SEP 25 P 1:12

**FILED**

At a session of said Court  
held in the city of Mason, County of Ingham,  
this 25<sup>th</sup> Day of September 2012.  
PRESENT: HON. WILLIAM E. COLLETTE

This matter comes before the Court on Plaintiffs' motion for summary disposition pursuant to MCR 2.116(A) in Plaintiffs' administrative appeal of Defendant's final agency decision pursuant to MCL 600.631. Defendant filed a motion for summary disposition on the same issue pursuant to MCR 2.116(C)(8), (10). The Court, being fully advised in the premises of the matter, **DENIES** Plaintiffs' motion and **GRANTS** Defendant's motion.

**FACTS**

On April 27, 2012, Plaintiffs emailed a petition to the Michigan Department of Environmental Quality (hereinafter "Defendant") seeking a declaratory ruling pursuant to MCL 24.263 on whether the rules governing injection wells should be applied to oil and gas wells that were about to be installed near Plaintiffs Hughes' and Schiele's homes, which would employ horizontal drilling in the initial recovery. On April 29, 2012, a hard

copy of the petition was filed with the Defendant.

On June 28, 2012, the Defendant, through its Director Dan Wyant, issued a declaratory ruling stating that the initial development of an oil and gas well using horizontal drilling is not defined as an injection well and therefore, rules applicable to injection wells would not be applied to the wells in question. Plaintiffs filed this motion for summary disposition on September 5, 2012, challenging the final decision of the Defendant agency. Defendant filed a motion for summary judgment on September 17, 2012, addressing the same issue as Plaintiffs' motion.

### **I. STANDARD OF REVIEW**

MCL 600.631 states that:

An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases.

Review of an agency decision under MCL 600.631 is limited to review provided by

Const 1963, art 6, § 28, which states:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

Where no evidentiary hearing is required, review of an agency's final decision is limited to determining whether the agency's actions were authorized at law. *Se. Oakland County*

*Incinerator Auth. v. Dep't of Natural Res.*, 176 Mich App 434, 438 (1989).

## II. ANALYSIS

Plaintiffs argue that the Defendant erred in not applying the rules applicable to injection wells to oil and gas wells that employ horizontal drilling in the initial stages of recovery under the Defendant agency's rules. In addressing this argument, Plaintiffs argue that the letter by Director Dan Wyant providing the declaratory ruling is not valid.

### A. Wyant Letter

Plaintiffs argue that the letter from Department of Environmental Quality Director Wyant cannot be held as a declaratory ruling of the agency because the letter was signed two days after the 60 day time period for agency action under R 324.81(2).

However, the Defendant gave its declaratory ruling within 60 days of receiving the hardcopy of Plaintiffs' petition. Therefore, the letter from Director Wyant is a proper declaratory ruling of the Defendant.

### B. Application of Injection Well Rules

Plaintiffs argue that the Defendant erred in not applying the rules applicable to injection wells to the wells in question under R 324.102(x), which defines an injection well.

Review of an agency decision where no hearing is required will only be reversed where the decision is not authorized by law or amounts to arbitrary action. *Sibel v. Dep't of State Police*, 154 Mich App 462, 465 (1986). Further, deference should be given to an agency's interpretation of its own rules. *Id.*

Plaintiffs argue that R 324.102(x) applies to oil and gas wells that employ horizontal drilling in the initial stages of recovery and that oil and gas wells that employ

horizontal drilling in the initial stages of recovery can simultaneously be considered injection wells and oil and gas wells under the Michigan Department of Environmental Quality's rules. R 324.102(x) defines an injection well as follows:

[A] well used to dispose of, into underground strata, waste fluids produced incidental to oil and gas operations or a well used to inject water, gas, air, brine, or other fluids for the purpose of increasing the ultimate recovery of hydrocarbons from a reservoir or for the storage of hydrocarbons.

Plaintiffs argue that because horizontal drilling involves the injecting of water and other fluids for the purpose of increasing the recovery of hydrocarbons, any well that employs horizontal drilling is an injection well by definition. However, this interpretation does not fit with R 324.201(1), which separately designates the different types of wells into the following:

- (a) Oil or gas, or both.
- (b) Injection for secondary recovery.
- (c) Injection for the disposal of brine, oil or gas field waste, or other fluids incidental to the drilling, producing, or treating of wells for oil or gas, or both, or the storage of natural hydrocarbons or liquefied petroleum gas derived from oil or gas.
- (d) Injection or withdrawal for the storage of natural dry gas or oil well gas.
- (e) Injection or withdrawal for the storage of liquid hydrocarbons or liquefied petroleum gas.

The permit granted by the Defendant to develop the wells in question does not involve the storage of hydrocarbons, disposal of any materials, or secondary recovery. This rule also demonstrates that an injection well is not defined as being used in the initial drilling or recovery for oil, gas, or both.

Furthermore, Plaintiffs' focus on the phrase "for the purpose of increasing the

ultimate recovery of hydrocarbons” in R 324.102(x) does not support their interpretation that all wells that employ horizontal drilling are injection wells. The phrase “for the purpose of increasing the ultimate recovery of hydrocarbons” is found in the definition of “Secondary recovery” in R 324.103(j), which supports the Defendant’s interpretation under R 324.201(1) that injection wells are separate and distinct from oil and gas wells that use horizontal drilling in the initial stages. This is similarly supported in R 324.612, which discusses secondary oil recovery projects.

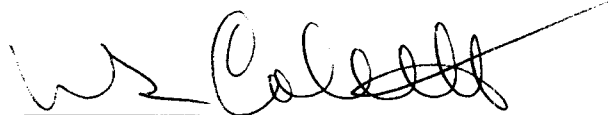
#### CONCLUSION

Director Dan Wyant’s letter is a proper declaratory ruling of the Defendant agency that is at issue in this matter. The Defendant’s interpretation in this ruling is consistent in the context of the agency’s rules as a whole and demonstrates that the use of horizontal drilling in the initial stage of drilling and recovery is not defined as an injection well. Plaintiffs’ interpretation of R. 324.102(x) is not consistent with the rules when taken as a whole.

**IT IS ORDERED** that Plaintiffs’ motion for summary disposition is **DENIED**.

**IT IS FURTHER ORDERED** that Defendant’s motion for summary disposition is **GRANTED**.

**In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.**

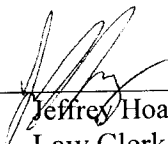
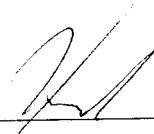


---

Hon. William E. Collette  
Circuit Court Judge

**PROOF OF SERVICE**

I hereby certify that I mailed a copy of the above ORDER which each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on September 25, 2012.

   
\_\_\_\_\_  
Jeffrey Hoard  
Law Clerk